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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STANLEY BURRELL,

Petitioner,

-against-

MEMORANDUM & ORDER

06 CV 6636

UNITED STATES OF AMERICA,
Respondent.

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DEARIE, Chief Judge.

By Memorandum & Order dated August 15, 2007, this Court denied petitioner's application and dismissed his petition pursuant to 28 U.S.C. § 2255. Petitioner, represented by counsel, requests that this Court reconsider its decision to decline to issue a certificate of appealability, or in the alternative, withdraw its Memorandum & Order and set a revised briefing schedule to allow petitioner to respond to the opposition filed by the government. Petitioner's request is denied.

A certificate of appealability "may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) ("Under the controlling standard, a petitioner must sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.") (internal quotation marks omitted). Petitioner does not meet this requirement.

Petitioner challenges his conviction under United States v. Booker, 543 U.S. 220 (2005), on the ground that the indictment failed to charge drug quantity. Second Circuit precedent is clear that

Booker “does not apply to cases on collateral review where the defendant’s conviction was final as of January 12, 2005, the date that Booker issued.” Guzman v. United States, 404 F.3d 139, 144 (2d Cir. 2005). As the Second Circuit noted in rejecting petitioner’s appeal, petitioner’s “conviction was final as of March 24, 2003, at the latest.” Burrell v. United States, 467 F.3d 160, 170 (2d Cir. 2006). Petitioner’s request for further briefing in this matter is also denied.

SO ORDERED.

Dated: Brooklyn, New York
October 11, 2007

s/ Judge Raymond J. Dearie


RAYMOND J. DEARIE
United States District Judge